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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 119

KATHLEEN B. NASH DURANT, *Petitioner*

v.

HELEN HIRONIMUS, WARDEN, FEDERAL REFORMATORY FOR WOMEN, ALDERSON, WEST VIRGINIA

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Fourth Circuit (R. 378-388) is reported at 168 F. 2d 288. The opinion of the district court (R. 1-14) is reported at 73 F. Supp. 79.

JURISDICTION

The judgment of the circuit court of appeals was entered May 4, 1948 (R. 389). The petition for a

writ of certiorari was filed June 25, 1948. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The principal questions presented are:

1. Whether an officer of the Army, on terminal leave prior to return to inactive status, who is drawing full pay and allowances and is entitled to all the privileges of active military status, is in an active duty status so as to be subject to military law for trial by court-martial in respect of offenses committed in the service prior to going on terminal leave.

2. Whether petitioner was timely notified of the issuance of orders terminating her terminal leave and directing her to report for duty at a new station therein specified.

3. Whether the Certificate of Service which petitioner received while on trial before a general court-martial was issued by mistake or without authority, and whether, in any event, such certificate could destroy the jurisdiction of the court-martial in respect of offenses committed by her while in the military service and before receipt of the certificate.

4. Whether two statements which petitioner gave investigators after her apprehension were obtained by unlawful coercive measures.

STATEMENT

On August 8, 1946, petitioner, who was then a Captain in the Women's Army Corps, Army of the

United States, was charged with violation of the 61st, 93rd and 96th Articles of War (10 U. S. C. 1533, 1565, 1568). The specification relating to the violation of AW 61 alleged (R. 117) that from about May 29, 1946, until she was returned to military control on or about June 3, 1946, petitioner was absent without proper leave. The specifications under the second charge of violating AW 93 alleged (R. 117-123) that petitioner and others feloniously took and carried away from a place in Kronberg, Germany, a large quantity of numerous specified articles of jewelry, silver service and other objects, of very considerable value. The third charge alleged (R. 123-127) a conspiracy between petitioner and others to convert to their own use various specified items of property. After a trial by general court-martial in Germany, petitioner was convicted on the first and second charges and the specifications thereunder (R. 129-131).[1] The record of trial was reviewed by the Board of Review and the Judge Advocate General pursuant to AW50½ (10 U. S. C. 1522) and found legally sufficient (see R. 132-162, 162-208) and the sentence was thereafter confirmed by the Under Secretary of War (R. 213) pursuant to AW 48 (10 U. S. C. 1519). Petitioner was sentenced to be dismissed from the service, to forfeit all pay and allowances due or to become due, and to be confined for five years (R. 131). Beginning on May 3, 1947, she was confined at the Federal Reformatory for

[1] Her motion for findings of not guilty on the third charge—the military law equivalent of a motion for a directed verdict, see par. 71d, MCM—was granted in the course of her trial by court-martial (see R. 153-154).

Women, Alderson, West Virginia, in respondent's custody[2] (see R. 19).

Shortly thereafter she filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of West Virginia, to which were attached numerous exhibits relating to her trial by court-martial (R. 16-68).[3] The petition alleged, in pertinent part, that the judgment of the court-martial was void for lack of jurisdiction because her active duty status had ended before charges were filed against her; because there was a failure to comply with AW 70 (10 U. S. C. 1542) relating to a preliminary investigation of the charges against her; because she was denied the opportunity to be represented by her husband, the counsel of her choice; and because two confessions were illegally extorted from her.

The writ issued on May 22, 1947 (R. 15). Respondent thereupon filed a return (R. 69-93) and petitioner filed a reply (R. 93-97). A hearing was had and on September 10, 1947, the district court entered an order discharging petitioner from respondent's custody (R. 99). In an opinion (R. 1-14), the court held that there had been substantial compliance with AW 70, and that there was no merit in petitioner's contentions relating to the confessions or the denial of counsel of her own

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[2] Previously she had been confined at a place outside the United States.

[3] Prior to this time petitioner had filed in this Court an original application for leave to file a petition for a writ of habeas corpus, which was denied on October 14, 1946. *Ex Parte Kathleen B. Nash Durant,* 329 U. S. 672 (No. 19, Misc., Oct. T., 1946).

selection. However, the court held that beginning on March 9, 1946, petitioner was on terminal leave; that this was not an active duty status, but, rather, one of inactive duty; and that there was no authority in the Army to recall her to active duty for the purpose of court-martial proceedings. The court further held that, assuming *arguendo* that petitioner had been on active duty status while on terminal leave, she had not timely received the order revoking her terminal leave; and that a Certificate of Service which petitioner received at a later time could not be impeached absent a showing of mistake or unauthorized issuance.

On respondent's appeal to the Circuit Court of Appeals for the Fourth Circuit, the order of the district court was reversed, and petitioner was remanded to respondent's custody (R. 389). In an opinion (R. 378-388) by Judge Soper, speaking for a unanimous court, the court below held that while she was on terminal leave petitioner was on active duty, and that she was properly notified of a change in her orders prior to the time when her inactive status would have commenced. The court further held that the certificate of service which petitioner had received after her orders had been changed and while charges were pending against her had been issued by mistake, and that the contentions respecting AW 70 and the asserted denial of due process in the court-martial trial properly had been resolved against petitioner.

The pertinent facts relating to the question of petitioner's military status are summarized below.[4]

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[4] The facts pertaining to petitioner's other contentions are stated in the Argument, *infra*, pp. 15-25, in connection with the discussion of these points.

On or about March 3, 1946, petitioner returned to the United States from a tour of military duty in Europe (R. 290. She reported to Camp Beale in California on March 6 (R. 291). At that time petitioner had accumulated 81 days of leave (R. 292). On March 9 she received orders granting her "leave of absence" for 81 days plus two days for travel time and providing that at the expiration of this period (May 30, 1946) she would be relieved from "active duty" and would continue to retain her appointment in the Army of the United States for the period of the emergency and six months thereafter, unless sooner terminated. The order also authorized petitioner "to visit Mexico and Canada during period of terminal leave." (R. 28-29.)

During the course of the processing at Camp Beale, petitioner's identification card was perforated with the word "inactive" and returned to her (R. 335). This was done at this time only for purposes of convenience, for the period of inactive status did not begin until the end of the terminal leave period (R. 341). It was contemplated by those administering the Army's separation system that the special orders received by the officer when read in conjunction with the identification card would disclose "the date on which the card is actually 'Inactive' as punched" (R. 341). In addition, petitioner received $100 as part payment of her mustering out pay (R. 292), attended one or two orientation lectures (R. 336-337), and signed various forms required for her eventual relief from active duty, including a Certificate of Service (R. 329-330). These were placed in a "Suspense File"

to be acted upon at the completion of the period of terminal leave, thereby avoiding the necessity for requiring petitioner to return to Camp Beale to be separated from active military service (R. 331).[5] Petitioner left Camp Beale on March 9, 1946, and during the ensuing period of her terminal leave she was carried on the rolls of Camp Beale as one who was on active duty assigned to that camp (R. 332-333).

On May 24, 1946, prior to the expiration of petitioner's period of terminal leave, there issued "By order of the Secretary of War" a War Department Letter Order (R. 282-283) which—

1. Revoked so much of the Camp Beale Separation Center orders of March 9, 1946, as stated that petitioner would revert to inactive status on May 30, 1946;
2. Terminated her leave of absence on May 28, 1946; and
3. Relieved petitioner from assignment to the Camp Beale Separation Center and assigned her to Fort Sheridan, Illinois and directed her to report to Fort Sheridan on May 29, 1946.[6]

At the same time, on May 24, 1946, telegrams were dispatched to petitioner and to Camp Beale giving notice of the order (R. 286, 321). The officer who prepared petitioner's orders testified that

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[5] The Certificate of Service was dated May 30, 1946, the date on which the terminal leave period was to expire, and was sent to petitioner in August 1946 (R. 336).

[6] This was one day prior to the expiration of the terminal leave period.

they were properly addressed to petitioner and were handled in the usual manner for outgoing correspondence (see R. 320-321). Petitioner denied that she received the orders until after her apprehension and after the period of her terminal leave had expired (R. 294). However, she admitted that she saw the telegram on May 29 (R. 294) when she returned to her home from a trip to Chicago (R. 293). That telegram informed petitioner that War Department Letter Orders were being mailed to her on May 24, 1946, recalling her to active duty May 29 and assigning Ler to Fort Sheridan, Illinois (R. 286). Petitioner promptly replied to the telegram by sending a telegram to Fort Sheridan in which she referred to her orders and stated that she did "not desire further active duty" (R. 286, 296). Petitioner later sent another protest telegram to Fort Sheridan (R. 286, 296) and telephoned her new station, and on the latter occasion stated that she was supposed to report to Fort Sheridan (R. 310). However, she did not report on May 29, as ordered, and on June 3, 1946, she was apprehended in Chicago and taken into custody by military police (R. 297). The court-martial proceedings followed.

ARGUMENT

The principal issue presented by the present case, whether an officer on terminal leave is so far in an active duty status as to be subject to military law, was, as we shall demonstrate, correctly decided by the court below. But by reason of subsequent legislation, that question is no longer one of general importance; for, since the enactment of the Armed Forces Leave Act of August 9, 1946, as amended (37 U. S. C. A. 32(c)), payment of ac-

cumulated leave may be made in a lump sum, and the practice of placing officers on terminal leave at the expiration of their tours of duty has been discontinued.

Even on that issue, the controversy between the parties is as to the legal conclusions to be drawn from the facts relating to petitioner's military status, facts which are largely reflected by documents and concerning which, apart from a few items of minor significance, there is no real dispute. For reasons to be set forth below, we submit that the court below correctly decided all of the questions which petitioner now urges.

A. Petitioner's basic contention is that when she was on terminal leave, she was in an inactive status and could not be ordered on active duty for the purpose of court-martial proceedings. Assuming *arguendo* that petitioner's position as to the immunity of an officer on inactive duty is correct (but see R. 387-388), there is still ample basis here for the conclusion of the circuit court of appeals that petitioner was on active duty during her terminal leave period. It may be noted in this respect that petitioner does not deny that if her status was active, she was subject to court-martial proceedings, or that an officer on leave is on active duty. Rather, her position is that the situation of an officer on terminal leave is different from that of an officer otherwise on leave. Whether there are significant differences is the real issue.

As we have shown in the Statement, petitioner accumulated 81 days of annual leave during her period of service in the Army of the United States. Consistently with its then policy and at a time

when petitioner's period of military service was drawing to a close, the Army permitted petitioner to use her accumulated leave. On March 9, 1946, petitioner was given orders directing that she enjoy a leave status for 81 days plus two days' travel time, or until May 30, 1946, at which time her orders provided that she would become a member of the inactive reserves. It is because of this latter provision that petitioner seeks to differentiate her situation from that of any officer on leave. That there is no basis for the distinction is shown convincingly by the opinion of the circuit court of appeals (R. 380-383), on which, indeed, respondent could rest.

The strongest evidence of the correctness of the opinion below is the circumstance that Congress has on at least two occasions indicated that it considers terminal leave to constitute active duty.

Section 3(a) of the Armed Forces Leave Act of 1946 (Act of August 9, 1946, c. 931, 60 Stat. 963, 964) specifically states that "Leave taken prior to discharge before or after the enactment of this Act shall be considered as active military service * * *." And Sections 5(b) and 5(c)(1) of the same act similarly refer to members of the armed forces on terminal leave being on active duty.

Moreover the Act of November 21, 1945, c. 489, 59 Stat. 584, which exempted members of the armed forces on terminal leave from the operation of the statutes against dual compensation contained this significant language:

> Sec. 2(a) Any person, who, subsequent to May 1, 1940, shall have performed active service in the armed forces, may, *while on ter-*

> *minal leave pending separation from or release from active duty in such service* under honorable conditions, enter or reenter employment of the Government of the United States * * *, in addition to compensation for such employment, shall be entitled to receive pay and allowances from the armed forces for the unexpired portion of such terminal leave * * * [Italics added].

Both acts make perfectly clear that Congress regards officers on terminal leave as being still on active duty. And this view, as the court below pointed out (R. 380-383), is consistent alike with the numerous rulings of the Judge Advocate General holding that an officer on terminal leave is in an active duty status, and with the numerous advantages accruing to an officer on terminal leave (but not to an officer in an inactive status) on the same terms as they are available to any officer on active duty.

Petitioner seeks to escape these considerations by pointing to other factors (Pet. 14-15) which she urges furnish a basis for distinguishing her case. The petition intimates that these factors arise only in the case of terminal leave, but as we shall show they are, with minor exceptions, incident to any leave, whether terminal or otherwise. (We follow petitioner's numbering of the alleged differences.)

1. Terminal leave orders may be "final orders" if and when the self-executing provisions for return to inactive status become effective. As in the case of ordinary leave orders, "The officer is not required to do anything pursuant to such orders."

(*United States* v. *Williamson*, 23 Wall. 411.) Until the self-executing provisions become effective terminal leave orders are identical in effect with ordinary leave orders.

2. "Has no duties to perform and is a free agent with respect to the Army." (Pet. 14). An officer on regular leave of absence has no duties to perform either. (*United States* v. *Williamson*, 23 Wall. 411.) It is not true that an officer on leave of absence, either terminal or regular, "is a free agent with respect to the army."[7]

3. An officer on regular leave of absence has no commanding officer to whom he must report during such leave of absence. (*United States* v. *Williamson*, 23 Wall. 411.)

4. An officer on regular leave "is at liberty to go where he will during the permitted absence, to employ his time as he pleases * * *," (*United States* v. *Williamson*, 23 Wall. 411, 415) subject to limitations imposed on travel and other activities by the military which apply equally to those on terminal leave.

5. An officer on regular leave also may seek and accept private employment and draw his army pay in addition to the private wage.

6. With respect to the matter of dual compensation, (Act of Nov. 21, 1945, c. 489, 59 Stat. 584) the portion of the Act of November 21, 1945, al-

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[7] That there are restrictions on the conduct and activities of an officer on terminal leave is plainly shown by the reference to the applicable Army Regulations in the opinion of the court below (R. 380-381).

ready quoted (*supra*, pp. 10-11) specifically recognizes that the member of the armed forces continues in the military service and is not separated or released from active duty until the expiration of the leave.

7. An officer of the army on pass or ordinary leave need not wear the uniform. The same is true of an officer on terminal leave. Conversely an officer on terminal leave as well as an officer on ordinary leave may wear the uniform.

8. The Honorable Service Lapel button may be worn by any officer, while in civilian clothes, who served between September 8, 1939, and December 31, 1946. (Army Regulations 600-65, 20 Dec. 1946, par. 39c(a) and (d).)

9. An officer on regular leave, of course, receives no mustering out pay. It is true that petitioner received one-third of her mustering out pay at the inception of her terminal leave period, but when her orders were changed, she returned the payment upon request by the War Department (R. 262-263).

10. An officer of the army in the active service may be a candidate for, be elected to, and occupy public office under identical limitations and conditions as an officer on terminal leave. (Army Regulations 600-10, 8 July 1944, par. 6(b).)

11. When petitioner was on terminal leave she was considered a part of the strength of the Army and her name was carried on the records of Camp Beale as an officer on active duty. See *Hastings* v. *Reynolds Metals Co.*, 165 F. 2d 484, 486, 487

(C. C. A. 7), where in applying the reemployment provisions of the Selective Training and Service Act (50 U. S. C. App. 308), the court stated that the selectee's reemployment rights commenced after his terminal leave had expired and he was discharged from the Service.

12. It is true, as petitioner urges that when she left Camp Beale on March 9, 1946, her identification card was perforated "inactive." But as the undisputed evidence shows, this was done as a matter of administrative convenience, to avoid the necessity for taking this step after the terminal leave period expired. During the terminal leave period, the officer's special orders were regarded as sufficient identification (R. 341).

Petitioner also seeks to draw strength from the fact that the telegram of May 24, informing her that her orders had been changed, stated that she was being "recalled to active duty." Significantly, the orders themselves contained no such language. Instead, they provided that the order of March 9, 1946, which stated "that subject officer will revert to inactive status on 30 May 46, is hereby revoked"; that the unexecuted portion of petitioner's terminal leave was terminated May 28, 1946; that petitioner was "relieved" from assignment to Camp Beale and assigned to Fort Sheridan; and that she should report to that station on May 29, 1946 (R. 29-30). The most that the language of the telegram indicates is that the WAC Lieutenant who sent it paid too little heed to the precise language of the order and that, being normally engaged in the function of recalling officers to active duty

(R. 324), she used language familiar to her in wording the telegram. Petitioner seems to contend that such inartfulness is a basis for believing that petitioner enjoyed an inactive status while on terminal leave. But the carefully prepared and considered opinions of the Judge Advocate General, to which reference is made in the opinion below, holding that terminal leave status is an active duty status, destroy any basis for the inference which petitioner seeks to draw from the act of a junior officer engaged in a clerical function.

The short of the matter is that at no time prior to May 30, 1946, had petitioner's ties with the Army of the United States been so severed as to leave her in the same category as an officer in an inactive status. She purposefully remained in an active duty status in order to be able to draw pay and allowances for the 81 day period. She was informed by her orders that her inactive status would not begin until after May 30, 1946, and she thus was not unaware of her status. Having accepted the benefits of an active duty status, petitioner hardly is in a position now to complain that she also incurred one of the liabilities of that status and was subject to court-martial proceedings for offenses of which she has been found guilty and does not deny. The circuit court of appeals properly, we submit, resolved the issue of petitioner's status in conformity with the administrative and legislative understanding of the terminal leave status.

B. Assuming that she is mistaken in her first contention and that she was in an active duty status during her terminal leave period, petitioner urges

that the special orders of May 24 revoking her terminal leave and directing her to report to Fort Sheridan on May 29 were not communicated to her until after her terminal leave had expired. Accordingly, she argues that she was in an inactive duty status when she received the order and that the Army therefore lacked power to recall her for the purpose of trying her.

As we have shown in the Statement, *supra,* pp. 7-8, on May 24 the special orders concerning petitioner were prepared in the War Department and placed in an outgoing mail box. Petitioner denied that she received the orders until after her apprehension. Accepting her testimony in this respect, as the trial judge did (R. 4), there still remains no possibility of doubt that before May 30 petitioner knew that she had been ordered to report to Fort Sheridan. Indeed, she does not deny this. On May 24, when the special orders were issued, a telegram was sent to petitioner advising her that orders had been issued recalling her to active duty effective May 29 and assigning her to Fort Sheridan. Petitioner admits seeing the telegram on May 29 (R. 294, 312). That she understood its significance is made plain by the fact that she promptly, on May 29, sent a telegram to Fort Sheridan in which she referred to "Orders 0900[8] 29 May Report Ft. Sheridan Same Date for Return Active Duty" and in which she protested the change in her orders (R. 286). Securing no action on her first telegram,

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[8] "0900" means nine o'clock in the morning (R. 312). At the habeas corpus hearing, petitioner testified that she saw the telegram for the first time at about nine o'clock in the evening of the day in question (R. 312).

petitioner sent a second one to Fort Sheridan in which she said she could not understand her recall to active duty inasmuch as she was "discharged" on March 9, and in which she stated that she would go directly to the War Department on the matter (R. 286-287). On June 2, petitioner telephoned Fort Sheridan, identified herself as "Captain Kathleen B. Nash" and explained that she was "supposed to report for duty" (R. 310). Thus, it is plain from the undisputed facts that on May 29, prior to the expiration of the terminal leave period, petitioner had actual knowledge that her orders had been changed and that she was required to report to Fort Sheridan on that date.

Petitioner seeks to escape the impact of this admitted fact by urging that she thought that her new orders were the result of an earlier request for reassignment in Europe so she could be near her fiance. Whether she actually so believed is immaterial. It was not required that she understand the motivation for the issuance of the orders. Her only right was to be apprised of the orders, and then it was her duty to comply therewith. Since she knew what was required of her, petitioner quite plainly enjoyed the right which was hers. But she did not perform her duty.

C. In August 1946, during the course of her court-martial, petitioner received from Camp Beale a document known as a Certificate of Service, in the following terms (R. 336; see Ex. A, facing R. 28):

> This is to certify that Kathleen B. Nash L918024 Captain Holabird Signal Depot Aber-

> deen Maryland honorably served in active Federal Service in the Army of the United States from 23 February 1943 to 30 May 1946 Given at separation center Camp Beale California on the 30th day of May 1946
>
> I. N. McCollom
> (Sgd) Major, AGD

The reverse side of the document details petitioner's personal history and military service and states that May 30, 1946, is the "Date of Relief From Active Duty."

The district court treated the certificate as being in the nature of an honorable discharge given an enlisted man at the end of his term of service and thus treated it as a formal finding that petitioner had served honorably (see R. 13). It does not appear what weight the district court gave to the certificate. The circuit court of appeals rejected this holding, stating (R. 385):

> Obviously this holding disregards the realities of the situation and elevates into a position of controlling importance a procedural step erroneously taken in a system set up for the convenience of the officer about to be discharged from active service. There is evidence in abundance to show that the certificate was forwarded to the petitioner by mistake. Her terminal leave order had been formally revoked on May 24; she had been notified thereof on or before May 29; she had been arrested on June 3, and had been confined on

serious charges since that date. Charges had been preferred against her on June 8, 1946; she was transported to Germany in June, where other charges were lodged against her on August 8, 1946 and served upon her and referred for trial on August 10, 1946. All of these circumstances were known to Army authorities and brought out in a trial that attracted widespread notice in the following months. It passes all reasonable belief that the separation center intentionally issued to the petitioner, then under charges preferred by superior authority of stealing property of great value from citizens of an occupied country, a certificate that she had honorably served in the Army of the United States during the period when the theft was alleged to have occurred.[9]

Petitioner now contends that the circuit court of appeals was unwarranted in rejecting the finding of the district court. The facts in question are not disputed and the sole question on this aspect of the case is whether the court below had sufficient basis in the facts for rejecting the finding of the district court. For there is no question that if the facts show that the certificate was issued mistakenly or

[9] The Judge Advocate General has held that a certificate of service does not necessarily evidence a complete separation from military service; but if issued through error, it constitutes a misstatement of fact and a record of honorable service to which the recipient is not entitled. SPJGA 1946/1147, January 29, 1946.

by an unauthorized person, it is void, as the district court noted (R. 13). Cf. *United States* v. *Landers*, 92 U. S. 77, 80.

It is difficult, if not impossible, to understand how the certificate was issued otherwise than by mistake. For at the time of its delivery, petitioner had been served with court-martial charges and, indeed, was then being tried for the offenses in question. This very circumstance destroys the inference drawn by the district court that the recitation in the Certificate that petitioner had served honorably was a "formal and solemn act on the part of the Adjutant General of the Army" (R. 13). It is less than reasonable to believe that the Adjutant General, acting through a clerical officer at Camp Beale, determined that the court-martial charges were unwarranted and that petitioner, indeed, had served honorably. The above-quoted language of the district court in this respect is at war with reality.

This is emphasized by considering the administrative procedure by which the Certificate was issued. As we have shown in the Statement, when petitioner was at Camp Beale on March 9, 1946, she furnished information and signed the Certificate of Service, which was then placed in a "Suspense File," it being contemplated that the Certificate would be issued at the end of the terminal leave period. This was done for reasons of administrative convenience. Prior to May 30, the date on which the terminal leave period would have expired, petitioner's orders were changed and she was assigned to Fort Sheridan commencing on May 29. Camp Beale was so notified and commencing on

May 29 an entry was made in the morning report of Camp Beale dropping petitioner from the strength of the camp and stating that she had been transferred to Fort Sheridan (see R. 345-346).[10] Thus, after that date Camp Beale had no authority with respect to petitioner. The only fair inference from the record is that what happened at Camp Beale is that someone neglected to dispose of petitioner's "Suspense File" after her orders were changed[11] and that as a matter of routine procedure, the Certificate later issued (see R. 331).

Thus, the case is one where not only should the Certificate not have been issued because petitioner's orders were changed and she was not to be separated from the service on May 30, but also one where the Certificate was issued by an officer of Camp Beale at some time after May 30 and at a time when Camp Beale had no jurisdiction of petitioner. Plainly, the Certificate was mistakenly is-

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[10] These facts were adduced by exhibits attached to a petition for rehearing, which sought to answer various statements in the district court's opinion which were believed not to state the facts as they occurred.

[11] The officer at Camp Beale who was in charge of this procedure explained the margin for error at the time as follows (R. 328):

> "the Separation Center was set up to process 100 to 125 Officers, and the records show at that time we were processing 250 to 300 Officers. This, due to the reduction of the Army, at the same time my Section also being reduced through the discharges and I would lose four or five men and get one inexperienced man back to replace them. Therefore, I had not only the problem of peak business but the problem of losing some of my keymen at the same time."

sued by an officer who had no authority to issue it to petitioner.

Significantly, petitioner does not argue that the circuit court of appeals erred in its alternate conclusion on this point, a conclusion which renders it unnecessary to dwell further upon the refusal of the circuit court of appeals to accept the district court's finding as to the Certificate. Thus, the court below said (R. 386):

> If, however, we should adopt the view of the District Court that orders affecting the status of an Army officer are not effective until they are received by him, the petitioner's contention with respect to the certificate is equally groundless. The certificate was not received by the petitioner until August 17, 1946, and in the meantime, the petitioner had been arrested, charges had been lodged and referred to trial, and the jurisdiction of the court martial had attached and could not be affected by the subsequent changes in the status of the accused. See, in re Walker, 3 Am. Jurist, 281, Mass. Sup. Ct.; *Carter* v. *McClaughry,* 183 U. S. 365, 383; 31 Op. Atty. Gen. 521, 528; Winthrop's Military Law, 1886 Ed. p. 107.

D. Petitioner next suggests that there was a failure to comply with Article of War 70, which provides for a preliminary investigation before reference of a charge to a general court-martial. The trial court found (R. 7-8), and the circuit court of appeals agreed (R. 388), that "there was no substantial failure to comply with the requirements of Article of War 70." Petitioner does not

challenge the finding, but instead concedes its validity (see Pet. 35-36). In these circumstances, the matter requires no further elaboration, except that it should be noted that petitioner's statement (Pet. 36) that "no investigation was ever made" in respect of charges filed against petitioner on June 8, 1946, is immaterial to this case. For those charges were not involved in the court-martial proceeding (see R. 226), and thus have no relation to the judgment which petitioner seeks to upset. Both courts below have made concurrent findings that the charges tried by the court-martial whose proceedings are now being collaterally attacked were investigated in compliance with AW 70.

E. On the first day of her arrest, petitioner made a statement to an investigating officer and two days later she made a second statement.[12] At her court-martial trial both statements were received in evidence over petitioner's objection that they had been obtained under coercive circumstances. After hearing the facts, the court-martial rejected petitioner's claim of duress. The facts were reconsidered on review of the judgment of conviction and the ruling of the court-martial was approved. (See R. 158-159, 196-198.) In the district court the same contention was asserted and the court rejected it, as follows (R. 8):

> In considering the argument advanced by petitioner's counsel that she was deprived of her constitutional right to due process of law by the use against her at her trial of two confessions which it is claimed were extorted from

[12] The statements are not contained in the printed record.

> her by duress and coercion; by refusal to allow her husband to act as her attorney; and by the use, as counsel argues, of the original charges as a means of holding petitioner in custody while constructing a "case" against her, I have proceeded on the theory, as announced during the trial, that decision of factual questions on which there was conflicting evidence was for the court martial. I could not properly review or reverse their findings, unless there were sufficient uncontradicted evidence in the record to show clearly a denial of petitioner's constitutional rights. The admitted facts, in my opinion, fall far short of the mark, and I therefore dismiss this contention as being without merit.

Petitioner then reasserted the contention in the circuit court of appeals, which also rejected it, expressing agreement with the other tribunals which had considered the issue (R. 388). Notwithstanding that the printed record does not contain the testimony relevant to the issue and that every tribunal that has considered the question has rejected petitioner's contention, she reasserts it again in this Court.

The pertinent facts—those adduced by the prosecution and the defense—are summarized with appropriate references to the transcript of the court-martial proceeding in the opinion of the Board of Review (R. 174-179). Comparison of the facts stated in the "Petition for a Writ of Certiorari" (pp. 37-41) with the summary in the above-cited opinion discloses that petitioner has, for the most

part, stated only her own testimony and has neglected to state the substantial countervailing testimony which obviously was accepted by the court-martial. Since the facts are summarized in the record, there is no occasion to repeat them here. Suffice it to say that after examination and reexamination by both military and civil tribunals, there has been a unanimity of agreement that the facts do not support petitioner's contention. Once the issues of credibility are resolved against petitioner, as they have been, it becomes plain that there is little resemblance between the facts here and the confession cases upon which petitioner relies (Pet. 39, 41). The facts more closely resemble those in *United States* v. *Bayer*, 331 U. S. 532, 539-541, where the [redacted] confession—on direct and not, as here, collateral attack—was held to have been properly admitted.

CONCLUSION

The fully documented opinion of the circuit court of appeals demonstrates the lack of merit of petitioner's contentions. The basic question, as to the status of an officer on terminal leave, has by reason of later legislation ceased to be matter of

general importance. The petition for a writ of certiorari should therefore be denied.

PHILIP B. PERLMAN,
Solicitor General.

T. VINCENT QUINN,
Assistant Attorney General.

FREDERICK BERNAYS WIENER,
Special Assistant to the Attorney General.

ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

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